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Response to US Copyright Office and Library of Congress to Notice of Inquiry and Request for Comments, Docket No. RM 2-22-7 Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

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November 29, 2011

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James H. Billington
Librarian of Congress
101 Independence Avenue, SE
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RE: Response to Notice of Inquiry and Request for Comments, Docket No. RM 2-11-7
Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access
Control Technologies

The University of Michigan Library Copyright Office offers scholars, researchers, staff, and students information about copyright, helps set University copyright policy, and assists the campus community with copyright-related matters. It is our pleasure to submit comments for the current DMCA rulemaking process. Movies and audiovisual materials are essential to much of today's scholarship and education, and the Library acquires by purchase and license a wide array of materials in all formats for these purposes. The observations in this comment are consistent with an overarching respect for copyright and the rights of copyright holders.

In the preparation of these comments, our office worked with librarians and faculty to identify examples where the exercise of lawful uses has been inhibited by the anti-circumvention provisions of the DMCA and where academic research, teaching, and speech has been chilled by the operation of the statute. We wish to take a moment to note that some faculty who provided examples of lawful uses for this comment were uncomfortable being attributed or quoted because they worried that 'industry might start to target' them even though they believe their uses are firmly within the law. We mention that this concern is being voiced to let you know that there is a very real chilling effect on constitutionally protected speech.

This document describes instances where the DMCA prohibition on bypassing anti-circumvention measures has caused actual harm to lawful scholarly and educational activities and where otherwise lawful, Constitutionally protected speech is chilled by the anti-circumvention provisions.

The following list of examples is a selected compilation from a general request for examples of uses of movies or audiovisual materials as relevant to this Comment. These examples are illustrative but not exhaustive.

- Professor teaches German and has students translate movies and prepare subtitles as part of their learning experience.
- Professor uses multiple clips of East European movies for his courses. By pulling the clips (instead of queuing up the entire film for each title used) he has been able to recapture 10

minutes of classroom time for instruction, nearly five ours of additional instruction time per semester. This allows the professor to work at greater depth on the themes and topics for the course and greater analysis of the media itself – thus greater comprehension of linguistic and cultural phenomenon.

- Professor uses clips from Hindi language feature films to demonstrate dialog as well as cultural context for that dialog.
- Professor teaches German and works with discrete clips from feature films to have students interactively engage with the movie, learning vocabulary, grammar and culture.
- Professor teaches French and uses a variety of film clips from titles to teach about France and its role in World War II, using this content to create lessons to reinforce advanced grammar exercises. An example included teaching about indifference in the Holocaust in France and America. Students are asked to view scenes to help them understand that the anti-Semitism occurring in France was also prevalent in the US and are asked to react using the subjunctive to what they learn in the video.
- Professor creates subtitles for a scientific German course where students study the history of science in Germany using original language scientific video.
- Student used clips from a Portuguese movie to demonstrate his research in a presentation for non-Portuguese speakers; he needed to make a copy of the movie to subtitle the clips for comprehension.
- Professor pulls clips from Russian language television program to subtitle for the audience of a Russian actor/activist who will visit campus and present his work to the faculty and students. A component of his work is about Russian humor.
- An audiovisual example: professor teaches French using French music and culture to compare traditional versions of national anthems, hip-hop, and other updated versions of the traditional work. Each song is needed in its entirety to understand context. Students listen to as many as 100 songs in and out of class. Individual songs are copied from 30-40 CDs including some from very rare sources.
- Professor teaches and researches in the discipline of Communication states that “to be blunt, without the ability to circumvent anti-circumvention measures in order to make clips, I couldn't do much of the research that I do. It would also be problematic for my teaching.” This faculty member studies the effects of exposure to specific media messages on attitudes and behavior. To do so, they show clips from movies, TV shows, or other entertainment media in which the faculty member experimentally manipulates the presence or absence of some product or behavior. In one study, faculty member showed two different segments of a movie -- one in which the lead character smokes, the other in which he does not. Faculty member states that is impractical to "cue up" part of a movie every time they run an experimental session—further “the potential for human error is massive and would lead to invalid results.” In some cases, the professor has had to take selected scenes from different parts of the movie, omitting "chunks" and states that the only way to do this that allows for experimental control and quality of presentation is to compile the clips beforehand. “The merit of this research for science and society has been independently affirmed—my research has been supported by federal granting

agencies and published in multiple peer-reviewed scholarly journals.”

- A PhD Student in the School of Information frequently needs to break PDF encryption to take charts and graphs for use in poster sessions. This information is not always available in other formats, and the student cannot properly comment or otherwise discuss the underlying ideas without the use of these charts.
- For teaching, one professor typically uses DVDs to show a single, continuous clip where the disc contains subtitles. When more than one clip is needed (necessitating the cue up of multiple starting points) or where there are no subtitles, the professor create clip compilations for a seamless presentation in class that also allows students with hearing disabilities to fully participate in class.

These examples demonstrate substantial, lawful uses that meet the requisite standard of distinct, verifiable, and measurable impacts. We respectfully seek the renewal of the following current exemption:

(1) Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances:

(i) Educational uses by college and university professors and by college and university film and media studies students;

(ii) Documentary filmmaking;

(iii) Noncommercial videos.

Furthermore, we respectfully request that the current exemption be expanded, or another exemption be granted, so as to change the “Educational uses by college and university professors and by college and university film and media studies students” to a *discipline neutral exception* rather than an exception limited to film and media studies. The University of Michigan places a great value on multidisciplinary work, encouraging cross department collaboration between students; limiting the exemptions to film and media students chills the ability of non-film and media students to engage in legitimate collaborative activity. This multidisciplinary approach also calls into question the rigidity of classifications such as “film and media students.” Movies and audio visual materials are used in a multitude of ways in many disciplines, not just film and media as demonstrated by the language studies examples. We ask that the current exemption be broadened or that a new exemption be granted to allow these students to perform their research and scholarship.

Finally, we respectfully request that the exception be expanded, or a new exemption be granted, that includes audiovisual works beyond motion pictures on DVDs, for the limited, prescribed purposes and conditions listed in the above exemption. As vital as movies on DVD are to our scholarly and educational mission, many instructors use music on compact disk, files in .pdf format, and other forms of audiovisual works that are protected by anti-circumvention technologies.

We seek to renew and/or expand this exemption pursuant to our mission to support education and scholarship at the University of Michigan. The exemption as currently worded is vital to maintain the

quality of education in our film and media studies departments. We believe that these uses are lawful under both the Section 107 fair use and the TEACH Act provisions of the US Copyright Act.

We respectfully submit these comments for your consideration. The University of Michigan is deeply committed to providing the best possible environment for teaching and scholarship. We believe that seeking these exemptions is vital to the furtherance of that mission. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'ML', followed by a horizontal line extending to the right.

Melissa Levine
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